

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Abigail Shuster	Team: Squad #15	CCRB Case #: 201510324	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 08/18/2015 8:38 PM	Location of Incident: Clay Avenue and East 170th Street	Precinct: 44	18 Mo. SOL 2/18/2017	EO SOL 2/18/2017	
Date/Time CV Reported Sat, 12/05/2015 7:00 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sat, 12/05/2015 7:00 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Stephen Schoefer	4632	942525	044 PCT
2. POM Anderson Ortiz	26151	949424	044 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Alexis Dejesus	01421	946903	044 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Stephen Schoefer	Abuse: Sgt. Stephen Schoefer stopped the vehicle in which § 87(2)(b) was an occupant.	
B.POM Anderson Ortiz	Abuse: PO Anderson Ortiz frisked § 87(2)(b)	
C.POM Anderson Ortiz	Abuse: PO Anderson Ortiz searched the vehicle in which § 87(2)(b) was an occupant.	
D.POM Anderson Ortiz	Abuse: PO Anderson Ortiz searched § 87(2)(b)	
E.POM Anderson Ortiz	Abuse: PO Anderson Ortiz refused to provide his shield number to § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		

Case Summary

On August 18, 2015, at approximately 8:40pm, § 87(2)(b) was pulled over by Sgt. Stephen Schoefer of the 44th Precinct (**Allegation A**). Sgt. Schoefer, along with PO Alexis Dejesus and PO Anderson Ortiz, also of the 44th Precinct, approached § 87(2)(b)'s vehicle. PO Ortiz instructed § 87(2)(b) to step out of his vehicle, at which point he performed a frisk (**Allegation B**). While § 87(2)(b) stood at the rear of his vehicle, PO Ortiz allegedly searched § 87(2)(b)'s vehicle and searched a black backpack contained therein (**Allegations C and D**).

Before § 87(2)(b) was released, he asked PO Ortiz for his shield number and PO Ortiz allegedly refused to provide it (**Allegation E**). § 87(2)(b) was not arrested or summonsed during this incident.

§ 87(2)(g), § 87(4-b)

Since the date of the incident, PO Ortiz has been promoted to the rank of sergeant.

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate his complaint during his sworn statement, obtained on December 23, 2015, § 87(2)(b)
- A FOIL request was filed on February 25, 2016, to verify whether any notices of claim were filed. The results will be added to the case file upon receipt.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- § 87(2)(b) has filed one previous CCRB complaint, § 87(2)(b)
- Sgt. Schoefer has been a member of the NYPD for 9 years, during which time 14 prior CCRB allegations have been pled against him involving 6 cases. One allegation, a Question allegation, was substantiated in case number 200902227. § 87(2)(g)
- PO Ortiz has been a member of the NYPD for five years. He has been the subject of three previous CCRB allegations involving three cases and resulting in no substantiated allegations. § 87(2)(g)

Allegations Not Pled

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Upon hearing the audio during his CCRB interview (full audio contained in Board Review 3 and transcribed in Board Review 4) PO Dejesus acknowledged being the officer to ask, “You guys got ID on you?”, to which the unidentified fare responds, “Man, why we gotta show ID?” and then laughs. PO Dejesus acknowledged being the officer to then state, “He’s making it a bigger deal than it is, so we might have to make a report, with you guys as passengers, so that’s why.” § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

It is undisputed that PO Ortiz frisked § 87(2)(b) after removing him from his vehicle. § 87(2)(b) alleged it, PO Ortiz acknowledged performing it, and the audio from § 87(2)(b)'s dashboard camera contains a verbal exchange § 87(2)(g).

PO Ortiz testified that he observed § 87(2)(b) make multiple movements within his vehicle, directed toward the middle console area. PO Ortiz could not estimate how many movements or describe the motion of these movements, but stated that he observed § 87(2)(b) making some type of movement while PO Ortiz was approaching § 87(2)(b)'s vehicle from behind, through the back windshield. He continued to observe § 87(2)(b) making some type of movement through the driver's side window(s) as he approached, and as he stood outside of § 87(2)(b)'s driver side window. He did not report seeing any objects in § 87(2)(b)'s hands. After § 87(2)(b) refused to roll his window down, PO Ortiz asked him to step out of the vehicle. PO Ortiz testified that he then frisked § 87(2)(b) for his safety, as the movements § 87(2)(b) made created a suspicion that § 87(2)(b) was in possession of a weapon. He did not observe any bulges on § 87(2)(b)'s person, nor did he feel any objects during the frisk (BR 5).

From his position standing on the rear passenger side, PO Dejesus corroborated PO Ortiz's statement that § 87(2)(b) moved his arm or hand toward the middle console, though he testified to seeing only one such movement. He heard § 87(2)(b)'s refusals to roll his window down and knew that § 87(2)(b) stepped out of the vehicle at some point, but he did not observe a frisk or hear the entirety of the interaction on the driver's side, as PO Dejesus began conversing with the backseat fare at this time. Like PO Ortiz, PO Dejesus suspected § 87(2)(b) of being in possession of a weapon due to his uncooperative attitude and the movement that he observed him make. He did not suspect PO Dejesus of being in possession of a particular type of weapon (BR 4).

Sgt. Schoefer did not recall this incident and could therefore not address § 87(2)(b)'s behavior (BR 3).

§ 87(2)(b) denied having made movements toward the right during the officers' approach, testifying that his hands remained in his lap. When PO Ortiz's instructions increased in volume, § 87(2)(b) reported, he retrieved his cell phone which was on the front passenger seat so that he could record the incident. PO Ortiz then reached through the partway-open window, unlocked the door, and opened it from the outside before instructing § 87(2)(b) to exit and to leave the phone in the vehicle. He then performed the frisk (BR 9).



201510324_20160225_1101_DM.mp4

The audio recording that § 87(2)(b)'s dashboard camera captured generally corroborates § 87(2)(b)'s account of the conversation (Full video contained in Board Review 6 and transcribed in Board Review 8). PO Ortiz is heard instructing § 87(2)(b) to roll the window down, and twice the sound of an automated window mechanism is heard for a duration of a few seconds. PO Ortiz is also heard saying, "Let me see your other hand"(0:22-0:24 on the clip above), and later, after a door-opening sound as well as chiming sound consistent with a door being open are heard, PO Ortiz says, "Put the phone down, I don't want any objects in your hands. Do me a favor and step out of the vehicle"(0:33-35).

A frisk requires reasonable suspicion that an individual is armed and dangerous. People v. DeBour, 40 N.Y.2d 210 (1976) (BR 10).

§ 87(2)(g)

Allegation C – Abuse of Authority – PO Anderson Ortiz searched the vehicle in which § 87(2)(b) was an occupant.

Allegation D – Abuse of Authority – PO Anderson Ortiz searched § 87(2)(b)

§ 87(2)(b) alleged that, while he stood at the rear of his vehicle, PO Ortiz entered his vehicle and returned with § 87(2)(b)'s license, which had been stored in the front middle console area. Since § 87(2)(b) was instructed to face away from his vehicle, he did not observe the search in detail. After the stop concluded, he reported returning to his vehicle and finding the contents of his black backpack, which was resting on the front passenger seat of his vehicle during the alleged search, to be in disarray (BR 9).

PO Ortiz did not recall whether he entered or searched § 87(2)(b)'s vehicle. He did not recall whether he saw a black backpack inside of § 87(2)(b)'s vehicle and did not recall whether he searched such a backpack. He did not recall whether he observed any other officer take these actions. Notably, he testified to instructing § 87(2)(b) to stand at the rear of his vehicle, but he was unable to describe what occurred while § 87(2)(b) waited there (BR 5).

PO Dejesus testified that his only role during the stop involved conversing with the fares, who were seated in the rear of § 87(2)(b)'s vehicle and did not exit from it. He did not see any officer enter the front area of § 87(2)(b)'s vehicle, or search a black backpack, but stated that he was only focused on speaking with the fares throughout the stop. Sgt. Schoefer did not recall this incident at all. (BR 5, BR 3).



201510324_20160225_1221_DM.mp4

The audio, captured by § 87(2)(b)'s dashboard camera, contains an exchange between PO Ortiz, PO Dejesus, and the unidentified male fare (full video contained in Board Review 7 and transcribed in Board Review 8). As identified by the officers during their statements, PO Dejesus is the first male voice audible, speaking to the male fare about his kids and talking about the importance of seatbelts (0:00-0:09 in the above clip). The chiming sound vehicles make when a door is opened begins at 0:07. The second male voice, which is considerably louder in volume and begins speaking at 0:10, belongs to PO Ortiz. At 0:20, a sound consistent with an object being moved or placed down is heard, and at 0:26-0:27, a zipper sound is audible.

§ 87(2)(g)

Though identification was requested from the male fare (see Allegations Not Pled), none of the officers recorded his information in their memo books and § 87(2)(b) did not know his name. As such, he could not be contacted to provide testimony supporting either account.

The dashboard camera's audio at minimum places PO Ortiz in the front area of § 87(2)(b)'s vehicle while a vehicle door is open, and captures sounds of movement and zippering. § 87(2)(g) Moreover, PO Ortiz testified that he did not recall whether he searched § 87(2)(b)'s vehicle, whether he searched a black backpack, nor what he himself did while § 87(2)(b) was standing at the rear of his vehicle.

§ 87(2)(g)

A movement toward the passenger side of the vehicle, such as one which retrieves a cell phone, is insufficient cause to search a vehicle. People v. Hackett, 47 A.D.3d 1122, 850 N.Y.S.2d 676 (2008)(BR 11).

§ 87(2)(g)

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED].

Allegation E – Abuse of Authority – PO Anderson Ortiz refused to provide his shield number to § 87(2)(b)

§ 87(2)(b) reported that, after he was told that he was free to go, he asked Sgt. Schoefer for his shield number, and Sgt. Schoefer provided it to him. § 87(2)(b) then asked PO Ortiz for his shield number, to which PO Ortiz allegedly responded, “I’m not going to give that to you”(BR 9).

PO Ortiz did not recall whether § 87(2)(b) asked him or any other officer for their shield numbers. He did not recall refusing to provide it, nor hearing any officer tell § 87(2)(b) that they already had one and did not need others. Sgt. Schoefer did not recall this entire incident and could not address these allegations. PO Dejesus testified that he did not hear § 87(2)(b) ask any officer for his shield number, nor did he hear any officer refuse to provide it (BR 3, BR 4, BR 5).

The dashboard audio does not capture these allegations. Murmurs of conversation are audible toward the end of the recording, but no specific words are audible. As discussed, the fares were never identified. § 87(2)(g) [REDACTED].

Officers are to state their rank, name, shield number, and command, or otherwise provide such information, to anyone who requests it. NYPD Patrol Guide Procedure 203-09. (BR 12).

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

§ 87(2)(g), § 87(4-b)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

§ 87(2)(g), § 87(4-b)

Squad: 15

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date